Court of Appeal held that the Minister could not use his power to revoke licences in order to deprive licensees of the advantage that they had secured from the gap between the Government's announcement and Parliamentary authorisation of the change in fees."

We note from his affidavit that the respondent in Civil Appeal No. 222 of 1981 had argued that the proper course for the appellant to take would have been to get the landlord to herself put the premises into a habitable condition.

Under the provisions of the Act which by the time the enquiry was held had become applicable a closing order under section 82(9) of the Act could have properly been made in which case the respondent as occupier could have been asked to leave under section 82(12).

It is not disputed that respondent had, through his solicitor offered to repair the premises, an offer to which appellant did not deign to reply. At the time of his filing the affidavit (June 1981), and indeed up to the time the appeal was argued in September 1982 it would appear that no closing order, or no order of demolition under section 83 had been issued.

Had such orders been made, an order revoking the licence would obviously have been unnecessary. Whilst we would hesitate to say that we have found that the allegation of bias, the burden of which lies on respondent has been proved, we are satisfied that the order of revocation is an improper exercise of his discretion similar to that in *Congreve's* case and that *certiorari* would lie.

We would therefore affirm the order made by the learned Judicial Commissioner, albeit for a different reason.

The appeal is dismissed, and since the other respondents have had their licences revoked in similar circumstances, appellant's order revoking all the licences are hereby quashed. Appellant to pay costs here and in the court below on the higher scale.

Appeal dismissed.

Solicitors: *Abdul Rahman Saad & Associates; Wong & Dass.*

YAHAYA BIN MAT & ANOR. v. ABDUL RAHMAN BIN ABU

[O.C.J. (Syed Agil Barakbah J.) December 8, 1979]

[Alor Star – Civil Suit No. 305 of 1975]

Damages – Injured plaintiff discharging himself from hospital against medical advice – Unsuccessful treatment by bomoh – Readmission to hospital – Serious permanent disability.

The plaintiff, an infant, suffered a fracture of the right femur and a few minor lacerations. A plaster cast was applied to his injured leg. He discharged himself from the hospital against medical advice 40 later. Thereafter, the leg was treated by a bomoh who removed the plaster cast. The said treatment lasted for a month and was unsuccessful. The plaintiff readmitted himself into the hospital and remained there for 3 days. Shortening was 2½ inches and was due to a maltreated fracture. He walked with a limp. Disability was serious and permanent.

Held: the plaintiff was to be blamed for having failed to mitigate his injuries by his own action in getting a discharge against medical advice and undergoing treatment under a bomoh on his own initiative before being readmitted. The disabilities including the shortening of his leg would have been serious had he stayed on in the hospital for full treatment. Shortening of the leg deducted by half and accepted as 1¼ inches. $16,000 for pain and suffering and loss of amenities and $2,000 for loss of future earnings.

[**Editorial note**: The case is now reported only on the question of damages. A report of the Federal Court appeal appeared in [1982] 1 M.L.J. 202].

Cases referred to:

(1) *Pradep s/o M. Gopal (an infant) suing by his mother and next friend* v. *Kamruddin bin Mohd. & Anor.* Kuala Lumpur Civil Suit No. 1001/1967 (see *Dass* on Quantum in Accident Claims at page 683).
(2) *Kim Choi* v. *Ibrahim* [1972] 1 M.L.J. 253.
(3) *Arokiasamy Stanislaus John* v. *Ng Soo Puang* Muar Civil Suit No. 67/1971 (see *Dass* on Quantum in Accident Claims at page 694).

CIVIL SUIT.

P.R. Maneksha for the plaintiff.
Baldev Singh Bhar for the defendant.

Syed Agil Barakbah J.: ... Quantum: The plaintiff was admitted to the General Hospital, Kangar on October 25, 1974 with a fracture of the right femur and a few minor lacerations. He was treated while in hospital and discharged about forty days later on December 4, 1974, at his own request and against medical advice. On examination he was found to suffer from the following injuries:–

1. Swelling on the right thigh and right knee with abnormal mobility.
2. Laceration ¾" on right mid-thigh.
3. Minor laceration of right knee.
4. Laceration of right nostril.
5. Abrasion of right forearm and hand with swelling.
6. X-ray shows a fracture of the right femur.

(See page 8 of Ex. A for the Medical Report by Medical Officer, General Hospital, Kangar).

While in Hospital, according to the plaintiff, a plaster cast was applied to his right leg and that was still on when he was discharged. Thereafter the leg was treated by a bomoh in the kampong and some splints were used after the plaster cast had been removed. The treatment lasted about a month. After that he went again to General Hospital, Kangar, was admitted on January 19, 1975 and subsequently discharged on January 21, 1975.

A dispute arises here as to whether a plaster of paris was actually applied to his injured leg and if so whether the plaintiff took it out himself about 45 days or so after his discharge as claimed by him. According to Dr. K.S. Sivananthan (D.W.1), a Specialist Orthopaedic, who was called by the defendant, the plaintiff ought to have stayed in the hospital for at least three months in order to allow the fracture to be consolidated and stable; that, in his opinion, the plaintiff had Thomas splint traction applied to his injured leg instead of plaster of paris, and further if the patient had been fully treated without discharging himself from hospital, there would be no shortening. In answering the question posed above, on the facts and circumstances it would appear to me that the plaintiff probably had taken off the case well before the 45 days for the purpose of bomoh treatment, since he could not stand the itch caused by the cast. It seems that since the bomoh treatment did not succeed, the gained readmission to the hospital after getting medical advice at Kuah, Langkawi. To my mind, the plaintiff had gone wrong in point of time due to the lapse of time since the accident occurred.

The expert opinion of Dr. K.S. Sivananthan, was based on his examination of the plaintiff on October 4 and 14, 1978 and perhaps on the report of prior examination by Dr. A.L.W. Bell on December 20, 1976. Apart from that, Dr. K.S. Sivananthan did not call for the Plaintiff's medical history nor contract the medical officer of the General Hospital, Kangar for the purpose. He agreed in cross-examination that without referring to the original file and record from the Kangar Hospital, he would not be able to give a proper opinion. Further his opinion in court that there would be no shortening of the right leg if the patient had undergone proper treatment in the hospital, contradicts his written opinion "that the shortening in his lower right limb can be reduced and the angular and rotational deformaties at the old fracture site can be corrected ..." (see page 2 of Ex. C). In the circumstances I am unable to accept his opinion on the material particulars. Nevertheless, his report (on page 2 of Ex. C) read together with Dr. Bell's report as to the condition of the patient after October 16, 1978, shows that the right lower limb was shorter than the left by 2½ inches due to maltreated fracture of the mid-shaft. Ther is angular and external rotational deformaties at the old fracture site i.e. the right thigh and anterior aspect of the mid-thigh with a 2 cm x 2 cm scar and the right knee. He walks with a limp. The disability is serious and permanent. He can however, stand erect on the right foot without support and can squat well. Having regard to the facts and surrounding circumstances of the case I am of the opinion that the plaintiff is also to be blamed for having failed to mitigate his injuries by own action in getting a discharge against medical advice and undergone a kampong treatment on his own initiative before being readmitted in the Kangar Hopsital. I would expect in normal circumstances the disabilities including the shortening of his leg to be less serious had he stayed on in hospital for the full treatment. It is unfortunate that Dr. K.S. Sivananthan's opinion cannot be of much assistance for the reasons stated earlier. My task has therefore become difficult and I have endeavoured to read together both Dr. Bell's and Dr. K.S. Sivananthan's report on the effect of the injuries as staged above, and at the same time take into consideration the plaintiff's failure to mitigate the damages. I would deduct the shortening of the leg by half and accept it as at 1¼ inches. I think that is the safest approach under the circumstances. All the cases citied are for injuries including shortening of the leg by 2½ inches. I have therefore examined other relevant cases as guidance. In *Pradep s/o M. Gopal (an infant) suing his mother and next friend* v. *Kamaruddin bin Mohd. and another*,[1] S.M. Yong, J., awarded the sum of $16,000/–

to the fourth plaintiff who sustained 3 inches lacerated wound on the forehead, fracture of the right femur and 1½ inches shortening of the right leg with knee flexion possible up to 90 degrees. There was chronic swelling around the knee joint and scar on forehead. He walked with a limp.

In *Kim Choi* v. *Ibrahim,*[2] Suffian C.J. (as he then was) awarded general damages of $12,500/– to a twenty-seven year old male plaintiff bookseller who sustained fracture of the clavicle, fracture of the femur resulting in pain and suffering and shortening of the leg by 1¾ inches which made squatting difficult. The first fracture had healed and there was no limitation of movement. The second fracture which led to the shortening had not united in too good a position.

In *Arokiasamy Stanislaus John* v. *Ng Soo Puang,*[3] Gill, F.J., (as he then was) awarded the sum of $12,500/– as general damages to a 47 year old plaintiff who suffered fracture of three ribs; of the right femur. Medical examination revealed permanent 1" shortening of the right thigh and right calf. There was slight limitation of movements in the hip and the knee. The effect of the injuries to the plaintiff in the present case is more or less similar to the case cited and taking into consideration the lapse of time since the awards therein were made (1972-3), the existing period of inflation and not forgetting the possibility of overlapping in making the award, I am of the view that the sum of $18,000/– is fair and reasonable as general damages, i.e. $16,000/– for pain and suffering and loss of amenities. In the absence of proof as to loss of future earnings of the plaintiff who is still an infant, I award the sum of $2,000/– as fair and reasonable. The special damages have been agreed at $376/–.

Solicitors: *Richard Talalla & Co.; Triptipal Singh & Co.*

LOW LUP PIOW & ORS. v. LEE SOH HUA

[O.C.J. (Ajaib Singh J.) January 9 & June 16, 1982]
[Seremban – Civil Suit No. 115 of 1977]

Contract – Sale and purchase agreement of land – Specific performance allowed – Damages for breach of contract.

The plaintiffs in this case sued the defendant for specific performance of an agreement in writing dated September 22, 1975 in which the defendant had agreed to sell her land to the plaintiffs for $700,000. The plaintiffs also claimed $300,000 as liquidated damages and $48,302 as specific damages which the plaintiffs had incurred in relation to the land.

The plaintiffs alleged the defendant was to take all steps and sign all documents necessary for the early issue of the subdivisional titles. By a letter dated September 7, 1976 the defendant repudiated the agreement on the ground that no drainage plans were submitted to the Town Council for approval.

The defendant counterclaimed for quit rent in the sum of $9,941.10 and survey fees in the sum of $5,000.

Held, allowing the plaintiffs' claim and dismissing the counter-claim: (1) there was no undue delay by the plaintiffs in trying to comply with the agreement. The defendant on the other hand had acted unreasonably and wrongfully in terminating the agreement;

(2) this was a proper case to order specific performance of the agreement. The plaintiffs would also be awarded $50,000 as damages;

(3) the defendant was entitled to the sum of $5,000 paid by her to the private surveyor. However she would receive it only on the date of completion of the sale.

CIVIL SUIT.

James Ponniah and *Soo Lim Pang* for the plaintiffs.

Peter Mooney and *Wong Weng Kwai* for the defendant.

Cur. Adv. Vult.

Ajaib Singh J.: After giving due consideration to the evidence adduced on behalf of the parties in this case and the submissions made by counsel for the parties I have come to the conclusion that the plaintiffs must succeed in this case.

On the evidence before me I find that the plaintiffs were on their part duly complying with the sale agreement as they could reasonably do in the circumstances and I find that the defendant acted unreasonably and wrongfully when she terminated the agreement of sale on September 7, 1976. I therefore allow the plaintiffs' claim for specific performance of the agreement entered into between the parties on September 22, 1975. The plaintiffs are also entitled to their claim for damages arising out of the wrongful termination of the agreement. It is now well over five years since the defendant broke the agreement thus putting the plaintiffs' development project at a standstill over the years. A sum of $50,000.00 appears to be fair and reasonable damages and I order accordingly. Costs to the plaintiffs.